

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. In July 2009 the petitioner underwent a review of his eligibility for the health benefits administered by the

Department. Based on the monthly income and expenses reported by the petitioner for the seven months going back to January 2009, the Department determined (in a decision dated August 26, 2009, effective for the six-month period beginning September 1, 2009) that the petitioner's average net income exceeded the maximum amounts for his and his wife's eligibility for CHAP, and for his child's eligibility for Dr. Dynasuar until a spenddown amount of \$10,233.12 was met.

3. A hearing was held on October 9, 2009. At the hearing the petitioner did not dispute that his average net monthly income for 2009 had been in excess of the maximum for the CHAP and Dr. Dynasaur programs. The matter was continued, however, to allow the Department to consider additional deductions for child care claimed by the petitioner and to determine whether the family's eligibility for health coverage could be based on monthly reporting.

4. In a letter dated October 14, 2009 the Department informed the petitioner and the Board that it had determined that monthly reporting was not practicable. It also noted that it had allowed further deductions for child care, which had lowered the petitioner's Dr. Dynasaur spenddown amount to \$7,023.12, but that the family's newly-figured net monthly income of \$4,611.59 was still in excess of the \$4,598 limit

(300 percent of federal poverty level) for both the CHAP and Dr. Dynasaur programs.

5. The petitioner called to say he could not appear at his scheduled hearing on November 6, 2009, and was advised that he could submit a written response to the Department's letter of October 14. In his response (dated November 13, 2009) the petitioner argues (for the first time) that the Department's notices didn't provide an "explanation" of how it determines net income and spenddown amounts. He makes no argument, however, that he has been unable to obtain access to the Department's regulations and policies, or that the Department's income determinations are either not accurate or not in accord with its regulations and policies.

6. The petitioner's and his wife's CHAP and his son's Dr. Dynasaur benefits have been continued pending the outcome of this appeal.

ORDER

The decision of the Department is affirmed.

REASONS

As noted above, the maximum allowable income for a three-person household for both Dr. Dynasaur and CHAP is \$4,598 a month. W.A.M. § P-2420. Eligibility for Dr.

Dynasaur is determined over a six-month period. § 4421.

Eligibility for CHAP is determined annually. § 5925.

Individuals may qualify for Dr. Dynasaur (but not CHAP) coverage by "spending down" their income on incurred medical expenses. § 4433. The spenddown amount is determined by subtracting the Medicaid Protected Income Level (*not* the Dr. Dynasaur eligibility maximum) from net income. § 4350.

In cases where fluctuating month-to-month income is anticipated, eligibility for Dr. Dynasaur/Medicaid and CHAP is based on income information that will most reasonably enable the Department to predict monthly income during the period of eligibility. §§ 4382.1, 5916 & 5321. As noted above, the petitioner's eligibility was determined in August 2009 for the six-month (Dr. Dynasaur) and twelve-month (CHAP) periods beginning September 1, 2009. In determining the petitioner's eligibility for these periods the Department used the 2009 year-to-date income and expense information furnished by the petitioner in July 2009. Despite the petitioner being found over income, his benefits have been continuing pending his appeal. It appears that the petitioner is only slightly over the income maximums for both programs. To date, however, he has not submitted any information or argument that the Department did not determine

his net income or eligibility for Dr. Dynasaur and CHAP in accord with its regulations.

If the petitioner has *new* or *different* information that he thinks would lead to a different calculation of income for the periods commencing September 1, 2009, he is free to reapply.¹ At this time, however, inasmuch as it appears that the Department accurately determined the petitioner's income in accord with the above regulations, the Board is bound to uphold the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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¹ It also appears that the petitioner may be in a position to voluntarily lower his income in order to qualify for these benefit programs. If he chooses to do so, again he is free to reapply.